



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,459	10/22/2003	Ajay R. Bam	65003/P002US/10312242	7339
29053 7590 12/23/2009 FULBRIGHT & JAWORSKI L.L.P. 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784				
EXAMINER				
LE, KHANH H				
ART UNIT		PAPER NUMBER		
3688				
MAIL DATE		DELIVERY MODE		
12/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/691,459  
Filing Date: October 22, 2003  
Appellant(s): BAM ET AL.

---

Kirby B. Drake  
Registration No. 55,126  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 30, 2009 (herein, "Br.,") appealing from the Final Office action mailed May 29, 2009, herein "05/29/09 Final OA".

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct. (However, the examiner notes that the cancelled claims are not listed in the listing of claims as such).

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct except for the following . Upon further consideration, Appellants arguments (dated 02/17/2009 at

pages 12-13), citing *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994), are found persuasive, thus **the rejection of Claims 66-69 under 35 U.S.C. 101 as directed to non-statutory subject matter is hereby withdrawn.**

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

US 6, 237,145	Narasimhan et al.	5-2001
US 7, 013, 286 B1	Aggarwal et al.	3-2006 (as support for Official Notice)
US 6, 450, 407	Freeman et al.	9-2002 (as support for Official Notice)
US 6,601,040	Kolls	7-2003 (as support for Official Notice)

*Legal Precedent: Leapfrog v. Fisher-Price* (Fed. Cir. 2007)

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claims 1-5, 7-14, 16-22, 26-41, 44-50, 52-63, 65 and 66-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narasimhan et al (6,237,145) in view of Official Notice (with e.g. Aggarwal US 7013286 B1 as support thereof) and/or legal precedent.**

**Claims 1, 3, 26, 30, 37, 55, 61, and 62:**

Narasimhan discloses a system, device, and method for distributing promotions, comprising:

- a. generating a promotion for use by a specific consumer (column 3, lines 28-35);
- b. transmitting the promotion data to a mobile electronic device of a requesting consumer (column 4, lines 16-20 and column 7, lines 10-49); and
- c. applying the promotion to a purchase using the mobile electronic device (column 7, line 50 – column 8, line 3).

As discussed in the rejection of Claim 6, 15, 24, and 43 in the December 7, 2007 Office Action, Narasimhan discloses the electronic device is a mobile device (smart card) (column 7, lines 10-49).

The Applicant has argued that the promotion is not transmitted to the smart card nor that a response is received from the smart card; thus, “the smart card is merely an identification card for the user and not a mobile electronic device”.

However Examiner J. Myhre has noted that Narasimhan explicitly discloses that the user may “employ a smart card reader/writer 128 to store the clipped electronic coupons in an appropriately configured clipped coupon database 118 on the smart card” and that subsequently the merchant device 122 can “read the clipped electronic coupons from the database 118 on the

smart card" (column 7, lines 10-48). Thus, the promotion data (coupons) is being transmitted (and stored) onto the smart card and the merchant device is receiving a response from the smart card when querying the clipped coupon database to retrieve the promotion information (coupon). Therefore, the smart card is performing the functions of the claimed "mobile electronic device".

Furthermore, as discussed in previous (and current) rejections of Claims 64 and/or 65, it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager).

**It appears Applicants argue Narasimhan's portable card device (which can be a magnetic stripe card, or smart card or IC card, col. 7 lines 20-32) with its card reader to download coupons to the card is not a wireless device and wireless transmission of data to the wireless device and wirelessly applying the promotion using the mobile electronic device arguably is not disclosed in Narasimhan.**

**Even if such is conceded, the following references, evidencing the level of skill in the art at the time of the invention, are provided as support for the above reasoning or Official Noticed facts taken earlier by Examiner Myhre.**

**It is known at the time of invention** that the following types of user devices or terminals, wired or mobile or wireless, can all be used interchangeably to receive/transfer data including incentives or coupons data.

**For example,**

Kolls US 6601040 in e-commerce/coupons scheme discloses interchanging smart card reader/writers with magnetic card reader/writers and other devices including wireless devices and networks (col. 14 lines 25-29; 40-49) to access/transfer data;

Freeman US 6450407 B1 discloses rebates or discounts are downloaded to a customer's chip card via a multiplicity of possible channels including: a personal computer, a portable chip card reader, a point-of-sale (POS) terminal, a handheld device, a home or business telephone, a vending machine, a cellular phone, a pager, a mass transportation payment station, a television and/or television set-top box, or an automated teller machine (ATM) (abstract) and cell phones with chip card communication ports (col. 8 lines 23-31);

Aggarwal US 7013286 B1 in a generation, distribution, storage, redemption, validation and clearing of electronic coupons scheme (abstract), discloses at (col.10 lines 13-22):

*"In another embodiment, the customer obtains electronic coupons and at a later stage, he or she downloads the electronic coupon in a portable device such as floppy disk, magnetic tape, compact disk, personal digital assistant, portable smart-card, cellular phone, etc., and takes the portable device to a retailer where the coupon verification equipment reads the electronic coupon from the portable device either using a wired communication channel or a wireless channel. The verification equipment then checks the validity of the coupon. If the coupon is valid, the retailer gives the intended discount to the customer."*

**Further it is a trend in the art for everybody to go mobile and do things on cellular phones/PDAs and the likes that used to be done in wired systems.**

***Leapfrog v. Fisher-Price* (Fed. Cir. 2007)** affirming a finding of obviousness, had addressed the issue of adoption of trends in the art, which is relevant in our case.

(This is the first application of the Supreme Court's obviousness pronouncement in *KSR v. Teleflex* by the Court of Appeals for the Federal Circuit (CAFC))

Leapfrog and Fisher-Price compete in the toy market. In this case, Leapfrog sued Fisher-Price -- alleging that Fisher-Price's PowerTouch Learning System infringes claim 35 of Leapfrog's patent.

The trial court found the patent not-infringed and **invalid as obvious**. On appeal, the CAFC affirmed, noting that the **obviousness analysis requires a common sense approach rather than any rigid formula**.

The CAFC held:

*"An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See KSR Int'l Co. v. Teleflex Inc., 550 U.S. \_\_ (2007) ("The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.*

This case has serious and direct implication for the instant application. The two pieces of prior art in Leapfrog were Bevin (electro-mechanical, but not electronic, toy for phonetic learning) and SSR (electronic book-type toy). Together, the two references teach almost all the elements of the asserted claim, and the courts found their combination to be appropriate.

The Court further held (emphasis added):

*We agree with the district court that one of ordinary skill in the art of children's learning toys would have found it obvious to combine the Bevan device with the SSR to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost. While the SSR only permits generation of a sound corresponding to the first letter of a word, it does so using electronic means. The combination is thus the adaptation of an old idea or invention (Bevan) using newer technology that is commonly available and*



*understood in the art (the SSR). We therefore also find no clear error in the finding of the district court that one of ordinary skill in the art could have utilized the electronics of the SSR device, with the method of operation taught by Bevan, to allow a child to press each individual letter in a word and hear the individual phonemes associated with each letter to sound out the words.*

*The one remaining limitation -- a "reader" -- was "well-known in the art at the time of the invention" and its combination. That known element could be combined because it provides "an added benefit and simplified use of the toy for the child in order to increase its marketability."*

*....Leapfrog presents no evidence that the inclusion of a reader in this type of device was uniquely challenging or difficult for one of ordinary skill in the art. Nor does Leapfrog present any evidence that the inclusion of a device commonly used in the field of electronics (a reader), and even in the narrower art of electronic children's toys, represented an unobvious step over the prior art.")*

Here, replacing the unit of Narasimhan with a cell phone or PDA is the adaptation of an old idea or invention (Narasimhan) using newer technology that is commonly available and understood in the art (the cellphone or PDA). As reasoned in Leapfrog, one of ordinary skill in the art could have utilized the electronics of the cellphone or PDA, with the method of operation taught by Narasimhan, to allow the user *an added benefit such as* convenience or mobility in the use of the promotion system taught by Narasimhan thereby increasing its appeal or marketability to the user. There is no evidence the combination is uniquely challenging or difficult for one of ordinary skill in the art thus the combination is obvious.

In view of the interchangeability of user devices as has been done in the prior art discussed above, and/or in view of the legal precedent of Leapfrog as discussed above, it would have been obvious to a person having ordinary skill in the art at the time the invention was made (herein a "PHOSITA") to replace **the unit including the card interface of Narasimhan with a**

**cell phone with chip card communication ports as taught by Freeman or with a portable phone as taught in Aggarwal.**

In case a portable phone is used, a wireless mobile communication network interface and means configured to communicate via a wireless mobile communication network with a service facility that provides the service as substantially claimed will be used, such as taught by Aggarwal (citation above), to allow the user the benefit of convenience or mobility in the use of the promotion system taught by Narasimhan thereby increasing its appeal or marketability to the user.

The Applicants argue in reference to Claim 1 that the step of "wirelessly applying said promotion to a purchase using said mobile electronic device" is not disclosed. However, as discussed in the rejection above, and in the rejection of Claim 6, 15, 24, and 43 in the December 7, 2007 Office Action, Narasimhan discloses the electronic device is a mobile device (smart card) (column 7, lines 10-49). The Examiner further notes that Narasimhan explicitly discloses that the user may "employ a smart card reader/writer 128 to store the clipped electronic coupons in an appropriately configured clipped coupon database 118 on the smart card" and that subsequently the merchant device 122 can "read the clipped electronic coupons from the database 118 on the smart card" (column 7, lines 10-48). Thus, the promotion data (coupons) is being transmitted (and stored) onto the smart card and the merchant device is receiving a response from the smart card when querying the clipped coupon database to retrieve the promotion information (coupon). Therefore, the smart card is performing the functions of the claimed "mobile electronic device".

Furthermore, as discussed in previous (and current) rejections of Claims 64 and 65, it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager). Further as discussed above, e.g. AGGARWAL

supplies the wireless limitation. The rationale for the substitution is as above discussed. Thus, contrary to argument, the combination of Narasimhan in view of e.g. AGGARWAL as above discussed discloses the step of "wirelessly applying said promotion to a purchase using said mobile electronic device" as set forth in claim 1.

The Applicants argue in reference to Claims 26 and 30 that the steps of "generating said promotion for use by a targeted consumer, wherein said targeted consumer is selected from a plurality of potential consumers" as set forth in claim 26, and the step of "generating said promotion for use by a requesting consumer, wherein said requesting consumer is prompted to request said promotion" as set forth in claim 30, are not disclosed.

However Narasimhan explicitly discloses transmitting data relating to the promotion to a mobile electronic device (see discussion above).

Further as to prompting the consumer to request the promotion, Narasimhan discloses the consumer requests the promotional data by logging in and walking through the hierarchical tree to select the desired promotional data (coupons) which are then stored in the database on the smart card. Walking through the hierarchical tree reads on the system prompting the user to request the promotion.

The Applicants argue in reference to Claim 37 that "receiving a reply from said mobile electronic device of said targeted consumer in response to said promotional offer; and facilitating a purchase by said targeted consumer, said purchase correlated to said promotional offer" are not disclosed. However the combination of Narasimhan in view of e.g. AGGARWAL does disclose transmitting data relating to the promotion to a mobile device and receiving a reply from the consumer via the mobile electronic device. These arguments have been addressed above. See discussion above.

The Applicants argue in reference to Claim 55 that "a mobile electronic device including at least "means for applying received promotion data when a purchase is made at a point of sale

(POS)" is not disclosed. However, this argument has been addressed in reference to Claim 41 below.

The Applicants argue in reference to Claim 61 that "a wireless mobile electronic device associated with a particular consumer; and means for receiving from said wireless mobile electronic device associated with said particular consumer an acceptance of said promotion" is not disclosed. However, Examiner Myhre had emphasized earlier that the Examiner considers the selection by the consumer, in Narasimhan, of the desired coupons as being an acceptance thereof. As discussed above, the selection may be made through the smart card, cell phone, pager, or other mobile electronic device being used by the consumer. Thus, contrary to argument, the combination of Narasimhan in view of e.g. AGGARWAL as above discussed discloses at least "a wireless mobile electronic device associated with a particular consumer; and means for receiving from said wireless mobile electronic device associated with said particular consumer an acceptance of said promotion" as set forth in claim 61.

**Claim 13:** Narasimhan discloses a method for redeeming promotions, comprising:

- a. accessing a promotion stored on a consumer's mobile electronic device (column 4, lines 16-20 and column 7, lines 10-49);
- b. applying (redeeming) the promotion to a purchase (column 7, line 50 – column 8, line 3);
- c. receiving a response from the consumer mobile electronic device redeeming the promotion (column 6, lines 30-36 and column 7, lines 10-49); and
- d. saving the redemption data in an electronic account (column 6, lines 30-36 and column 7, lines 10-49).

As discussed in the rejection of Claim 6, 15, 24, and 43 in the December 7, 2007 Office Action, Narasimhan discloses the electronic device is a mobile device (smart card) (column 7, lines 10-49). The Applicant has argued that the promotion is not transmitted to the smart card nor that a response is received from the smart card; thus, "the smart card is merely an identification card for the user and not a mobile electronic device". However, the Examiner notes that Narasimhan explicitly discloses that the user may "employ a smart card reader/writer

128 to store the clipped electronic coupons in an appropriately configured clipped coupon database 118 on the smart card” and that subsequently the merchant device 122 can “read the clipped electronic coupons from the database 118 on the smart card” (column 7, lines 10-48). Thus, the promotion data (coupons) is being transmitted (and stored) onto the smart card and the merchant device is receiving a response from the smart card when querying the clipped coupon database to retrieve the promotion information (coupon). Therefore, the smart card is performing the functions of the claimed “mobile electronic device”.

Furthermore, as discussed in previous (and current) rejections of Claims 64 and 65, it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager).

In view of the interchangeability of user devices as has been done in the prior art discussed above, and/or in view of the legal precedent of Leapfrog as discussed above, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the unit including the card interface of Narasimhan with a cell phone with chip card communication ports as taught by Freeman or with a portable phone as taught in Aggarwal.

As discussed above, in case the unit including the card interface of Narasimhan is replaced by a portable phone as taught in Aggarwal (citation above), a wireless mobile communication network interface configured to communicate via a wireless mobile communication network with a service facility that provides the service will be used, such as taught by Aggarwal (citation above), to allow the user the benefit of convenience or mobility in the use of the promotion system taught by Narasimhan thereby increasing its appeal or marketability to the user.

Examiner Myhre had emphasized earlier that, in Narasimhan, the data pertaining to the promotion is being stored on the smart card and that the smart card replies to an inquiry from the merchant device by retrieving (accessing) the promotion (coupon) data from the database when redeeming the promotion and transmitting (replying) the data to the merchant device.

Thus, contrary to argument, the combination of Narasimhan with e.g. Aggarwal as above discussed discloses at least the step of "redeeming said promotion by wirelessly replying to said server using said mobile electronic device" as set forth in claim 13.

**Claims 22, 41, and 44:**

Narasimhan a system and method for distributing a promotion, comprising:

- a. generating promotions for use by a consumer (column 3, lines 28-35);
- b. sending the promotion data to a consumer account accessible on the customer's mobile electronic device when requested (column 4, lines 16-20 and column 7, lines 10-49); and
- c. saving (storing) the promotion in the consumer account for later access and use by the requesting consumer's mobile electronic device (column 4, lines 16-20 and column 7, lines 10-48).

As discussed in the rejection of Claim 6, 15, 24, and 43 in the December 7, 2007 Office Action, Narasimhan discloses the electronic device is a mobile device (smart card) (column 7, lines 10-49). The Applicant has argued that the promotion is not transmitted to the smart card nor that a response is received from the smart card; thus, "the smart card is merely an identification card for the user and not a mobile electronic device".

However, the Examiner notes that Narasimhan explicitly discloses that the user may "employ a smart card reader/writer 128 to store the clipped electronic coupons in an appropriately configured clipped coupon database 118 on the smart card" and that subsequently the merchant device 122 can "read the clipped electronic coupons from the database 118 on the smart card" (column 7, lines 10-48). **Thus, the promotion data (coupons) is being transmitted (and stored) onto the smart card and the merchant device is receiving a response from the smart card when querying the clipped coupon database to retrieve the**

**promotion information (coupon). Therefore, the smart card is performing the functions of the claimed "mobile electronic device".**

**Furthermore**, as discussed in previous (and current) rejections of Claims 64 and 65, it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager).

Examiner Myhre had emphasized earlier that, in Narasimhan, it is explicitly disclosed that the promotions are stored (saved) in a database (account) "on the smart card" (i.e. "on the mobile electronic device"). Such a database would inherently be accessible by the smart card when redeeming the coupon at the merchant device as discussed above.

Thus, contrary to argument, the combination of Narasimhan in view of e.g. AGGARWAL (support for the Official Notice) as above discussed discloses at least the step of "saving said promotion in a promotion saving account accessible by said mobile electronic device wherein said consumer wirelessly redeems said promotion using said mobile electronic device for a purchase at a point of sale (POS)" as set forth in claim 22.

The Applicants argue in reference to Claim 41 that at least the limitation of "a mobile electronic device operable for wirelessly transmitting a request for promotional data and for wirelessly receiving generated promotion data" is not disclosed. However, as noted by Examiner Myhre in the last Office Action (pages 13-18)" Narasimhan discloses the consumer requests the promotional data by logging in and walking through the hierarchical tree to select the desired promotional data (coupons) which are then stored in the database on the smart card. Since Narasimhan's smart card has at least one input means and at least output means (in order to receive and send the promotional data to and from the database), it is inherently capable of transmitting the request through its output means and receiving the promotional data through its

input means. Furthermore, as discussed in the rejection above, it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager). As stated above, AGGARWAL supplies support for the Official Notice taken by Examiner Myhre thus the claim limitation(s) is (are) met.

**Claims 49 and 52-54:**

Narasimhan discloses a method for distributing a promotion, comprising:

- a. generating a promotion based on accessing a consumer profile database that includes consumer buying habits (column 4, lines 41-49);
- b. transmitting the promotion data to a mobile electronic device of a requesting consumer (column 4, lines 16-20 and column 7, lines 10-49); and
- c. applying (redeeming) the promotion to a purchase using the mobile electronic device (column 7, line 50 - column 8, line 3).

As discussed in the rejection of Claim 6, 15, 24, and 43 in the December 7, 2007 Office Action, Narasimhan the electronic device is a mobile device (smart card) (column 7, lines 10-49). The Applicant has argued that the promotion is not transmitted to the smart card nor that a response is received from the smart card; thus, “the smart card is merely an identification card for the user and not a mobile electronic device”. However, the Examiner notes that Narasimhan explicitly discloses that the user may “employ a smart card reader/writer 128 to store the clipped electronic coupons in an appropriately configured clipped coupon database 118 on the smart card” and that subsequently the merchant device 122 can “read the clipped electronic coupons from the database 118 on the smart card” (column 7, lines 10-48). Thus, the promotion data (coupons) is being transmitted (and stored) onto the smart card and the merchant device is receiving a response from the smart card when querying the clipped coupon database to retrieve



the promotion information (coupon). Therefore, the smart card is performing the functions of the claimed "mobile electronic device".

Furthermore, as discussed in previous (and current) rejections of Claims 64 and 65, it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager). As stated above, AGGARWAL supplies support for the Official Notice taken by Examiner Myhre thus the claim limitation(s) is (are) met.

The Applicants argue the step of "matching said promotion with a merchant profile in a merchant profile database when said consumer redeems said promotion by wirelessly communicating using said mobile electronic device in an electronic purchase" as set forth in claim 49.

Examiner Myhre had emphasized earlier that, in Narasimhan, the promotion is stored on the smart card; thus, it is transmitted to the mobile electronic device. "The promotional data is also matched against merchant data (transaction data) to ensure the corresponding product is being purchased at the correct merchant before redeeming the coupon. Since there is no other mention or use of the merchant profile in the claims, the Examiner has interpreted the matching step as to ensuring that the merchant is an authorized merchant for redemption of the promotional item (coupon) as is common in the art when the coupon is a merchant-specific coupon."

Further as discussed above AGGARWAL teaches substitution into a cellular phone if desired. Thus, contrary to argument, the combination of Narasimhan in view of e.g. AGGARWAL as above discussed discloses at least the step of "matching said promotion with a merchant profile in a merchant profile database when said consumer redeems said promotion by

wirelessly communicating using said mobile electronic device in an electronic purchase" as set forth in claim 49.

**Independent claims 66 and 70 and dependent claims 67-69 and 71-73:**

The elements in these claims that are common to claims 49 and 52-54, or 1, 37, or 61-63 are rejected as above discussed with reference to those claims.

The elements in these claims that are common to claims 4 and/or 13 are rejected as discussed below or above with reference to claims 4, and/or 13.

The Applicants argue in reference to Claim 70 that at least the step of "accepting over a temporarily established communication connection from a wireless mobile electronic device of any one of a plurality of users information specific to one of many merchants, said information including data specific to a unique location of one of said merchants, said specific data pertaining to merchandise obtained from said merchant" as set forth in claim 70 is not disclosed. This is interpreted as the Applicants argue that Narasimhan does not disclose the user specifying a merchant and receiving promotional information pertaining to that merchant in a wireless mobile electronic device environment.

However, it is disclosed in Narasimhan that the consumer accesses the promotional database, walks down through the hierarchical tree to a desired promotion or promotional area, and selects the desired promotion. In the coupon arts there are two types of coupons - general coupons which may be redeemed at any merchant that carries the product (e.g. a manufacturer's coupon) and specific coupons which may only be redeemed at one or more specific merchants (e.g. a Giant Foods coupon redeemable at a specific, or any, Giant Foods supermarket). Thus, it is inherent that when the customer in Narasimhan traverses the tree to the desired promotional area, the selected promotional area may be a specific merchant, such as for JC Pennies®.

Thus, contrary to argument, the combination of Narasimhan in view of e.g. AGGARWAL as above discussed discloses the above claimed limitation as set forth in claim 70.

**Claims 2, 14, and 50:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a method as in Claims 1, 13, and 49 above, and Narasimhan further discloses the promotion is a coupon, a discount, an alert, or an offer to sell (column 3, lines 28-35).

**Claim 4:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a method as in Claim 3 above, and Narasimhan further discloses processing the redemption (inherently, according to established redemption rules) (column 7, lines 10-49).

**Claims 5, 18, 36, 46, and 56:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a system, device, and method as in Claims 1, 13, 30, 41, and 55 above, and Narasimhan further discloses storing the promotion in an electronic account for later access by the consumer (column 4, lines 16-20 and column 7, lines 10-49).

**Claims 7, 8, and 21:** Narasimhan in view of Official Notice and/or legal precedent as above discussed discloses a method as in Claims 1 and 13 above, and Narasimhan further discloses the transmitted data (promotion) is a text or audio (voice) message (column 3, lines 28-35).

**Claims 9, 16, and 33-35:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a method as in Claims 1, 13, and 30 above, and Narasimhan further discloses a promotion distributor generating the promotion based on a request from the consumer (column 3, lines 10-16 and column 8, lines 5-7).

**Claims 10, 17, 27-29, 38-40, and 45:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a system and method as in Claims 1, 13, 26, 37, and 41 above, and Narasimhan further discloses generating the promotion based on the stored profile of the consumer/merchant (column 4, lines 41-49).

**Claim 11:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a method as in Claim 1 above, and Narasimhan further discloses automatically applying the promotion during the purchase transaction (column 7, lines 10-49).

**Claims 12 and 57:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a device and method as in Claims 1 and 55 above, and Narasimhan further discloses identifying the consumer by identifying the electronic device (smart card) (column 7, lines 10-49).

**Claims 19 and 63:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a system and method as in Claims 13 and 62 above, and Narasimhan further discloses redeeming the promotion at a point of sale (POS) terminal (merchant device) using a payment method controlled by the consumer's mobile electronic device (credit card) (column 7, lines 10-60).

**Claim 20:** Narasimhan in view of Official Notice and/or legal precedent as above discussed discloses a method as in Claims 1 or 19 above, and Narasimhan further discloses automatically applying the promotion during the purchase transaction (column 7, lines 10-49).

**Claims 31 and 32:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a method as in Claim 30 above, and Narasimhan further discloses that notifying consumers of promotions through the use of various types of advertisements (newspapers, television, etc.) was known well before the present invention (column 1, lines 23-55). Furthermore, no patentable weight is given as to why the consumer is requesting the promotion.

**Claims 12, 47, 48, and 57-60:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a method, system and device as in Claims 1, 41 and 55 above, and Narasimhan further discloses utilizing an Internet or telephone interface (column 4,

lines 9-15). In addition, Aggarwal as support for the Official Notice discloses cell phones (citation above).

Thus Narasimhan in view of Official Notice (e.g. Aggarwal) and/ or legal precedent as above discussed discloses the claimed promotion communication means. It is noted little if any patentable weight can be given to the type of protocol technology being used by these communication systems. Official Notice is taken that communication systems protocols such as DTMF for telephones, XML or J2EE for computer networks (including the Internet), etc. are well-known before invention time, thus it would have been obvious to one having ordinary skill in the art at the time of the invention to add the appropriate compatible ones to the system of Narasimhan in view of Official Notice and/ or legal precedent as above discussed, based on the capabilities of the specific hardware and software being used by the communication system to allow compatible functioning.(Further it is noted the type of protocol being used would not affect, nor has the Applicant pointed out how any of them would affect, the steps being performed).

**Claim 65:** Narasimhan in view of Official Notice and/ or legal precedent as above discussed discloses a system as in Claim 61 above, but does not explicitly disclose that the consumer device is a wireless device, such as a cell phone. However, it is noted that there are two ways for entering and retrieving data from smart cards, such as the ones disclosed in Narasimhan. The first is electronic contacts in which one or more contacts must be brought into physical contact with corresponding contacts on a card reader. The second is wireless contacts in which infrared, light, or radio waves are used to transfer the data with no physical contact between the smart card and the card reader. Each contact method has its known advantages and disadvantages. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Narasimhan could use a contact or contactless device for the consumer's device. **Furthermore, it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used to include a credit card type of smart card, a cell phone, a personal data assistant (PDA), a pager, etc.** One would have been motivated to use a wireless device, such as a cell phone, in order to

eliminate the need for the customer to carry an additional device by combining multiple functions into one device. The Examiner further notes that little if any patentable weight is given to the type of other functions the device is able to perform, i.e. as to whether the device can also make telephone calls, access the Internet, play music, etc., since none of these other functions are being used in the claimed invention.

Further as discussed above, e.g. AGGARWAL (support for the Official Notice) teaches substitution into a cellular phone if desired. Thus, contrary to argument, the combination of Narasimhan in view of e.g. AGGARWAL as above discussed discloses all of claim 65.

#### **(10) Response to Argument**

##### **Challenges to claim Rejections under 35 USC § 101:**

##### **Non-Appealable Issue in Brief**

Appellant's brief presents arguments relating to the rejection of claims 66-69 under 35 U.S.C. § 101. Appellant argues that after final amendment filed 07/29/2009 should be entered. The Examiner believes this issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201. The non-entered after final claims are not before this Board for consideration. (The Examiner maintains however that the proposed amendment would raise new issues of new matter or indefiniteness that need further consideration, thus refused entry). **Further the issue is moot since the rejection of claims 66-69 under 35 U.S.C. § 101 has been withdrawn.**

##### **Challenges to claim Rejections under 35 USC § 103:**

**As to independent claims 1, 26 and related dependent claims, as during prosecution,** Applicant argue Examiner Myrhe did not take Official Notice. Brief, pages 15-16, 23-25.

Examiner Myrhe stated in the Final Office Action mailed 04/22/08, that “...it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager).”

This Examiner interprets such statement as an Official Notice or a line of reasoning taken by Examiner Myhre. See Non-final Office Action mailed 10/15/2008, herein “10/15/2008 Non Final OA”, p. 6, 3<sup>rd</sup> full paragraph. This Examiner then proposes to supply 3 references showing the level of skill in the art, in support of such Official Notice or line of reasoning. See 10/15/2008 Non Final OA”, p. 6, 3<sup>rd</sup> full paragraph. Applicant has not cited any authorities why the present Examiner cannot continue a previous Examiner's line of argument, including Official Notices. Further, even if Examiner Myrhe did not take Official Notice, as argued, this Examiner effectively, on her own, took Official Notice when she stated:

***“It is known at the time of invention that the following types of user devices or terminals, wired or mobile or wireless, can all be used interchangeably to receive/transfer data including incentives or coupons data.***

*For example, Kolls US 6601040...; Freeman US 6450407 B1...; Aggarwal US 7013286 B1 ...”* 10/15/2008 Non Final OA”, p. 6, 4th full paragraph. “[I]t is known before invention time” is the equivalent of an Official Notice. Taking Official Notice, even for the first time, was entirely proper, in response to a submission made with a request for continued examination under 37 CFR 1.114.

Appellants argue that Aggarwal fails to demonstrate that various user devices or terminals may be used interchangeably with the smart card of the type set forth in Narasimhan thus it would not have been obvious to replace the unit including the card interface of

Narasimhan with a cell phone with chip card communications port as taught by Freeman or with a portable phone as taught in Aggarwal. Br., p. 16-17.

However, as explained during prosecution,

*"Aggarwal US 7013286 B1 in a generation, distribution, storage, redemption, validation and clearing of electronic coupons scheme (abstract), discloses at (col.10 lines 13-22):*

*"In another embodiment, the customer obtains electronic coupons and at a later stage, he or she downloads the electronic coupon in a portable device such as floppy disk, magnetic tape, compact disk, **personal digital assistant, portable smart-card, cellular phone, etc., and takes the portable device to a retailer where the coupon verification equipment reads the electronic coupon from the portable device either using a wired communication channel or a wireless channel.** The verification equipment then checks the validity of the coupon. **If the coupon is valid, the retailer gives the intended discount to the customer.**"*

Thus Aggarwal, as stated in last Office Action at p. 29, clearly shows "the interchangeability of the several mobile devices to transfer promotion-related data, including using cellphones which clearly are wireless devices."

In other words, Aggarwal teaches e.g. a portable smart-card can be interchanged with a cellular phone, to be used for coupon downloading and redemption (col.10 lines 13-22). **Since the smart card of Narasimhan is a portable smart-card (col. 7 lines 20-32) and Aggarwal broadly teaches interchangeability with portable smart cards, taken as including all portable smart cards, thus it would have been obvious to replace the smart card of Narasimhan with a wireless device such as a cellular phone, if desired, at least, since the cellular phone is an alternative among a known few, as taught by Aggarwal (col.10 lines 13-**



22). Note that the Aggarwal excerpt above (bold and underline emphasis) clearly teaches coupon redemption by wireless channels.

As stated above, the Official Notice taken by the Examiner was that "[i]t is known at the time of invention that the following types of user devices or terminals, wired or mobile or wireless, can all be used interchangeably to receive/transfer data including incentives or coupons data". Contrary to argument, at least Aggarwal supports such Official Notice since "a portable device such as floppy disk, magnetic tape, compact disk, personal digital assistant, portable smart-card, cellular phone, etc." as taught by Aggarwal, can all be used to store coupons/ rebates data.

As to Appellants' challenge to Leapfrog (Br. P. 17, 26), Aggarwal (see e.g. excerpt above) is clear evidence of the Examiner's assertion of the "trend in the art for everybody to go mobile and do things on cellular phones/PDAs and the likes that used to be done in wired systems." See e.g. above excerpt of Aggarwal.

As to Appellants' challenge to the level of skill in the art, this latter is shown by the cited references. As Examiner Myrhe stated in the Final Office Action mailed 04/22/08, that "...it would have been obvious that any type of device with the appropriate input, output, and storage mechanisms could be used, to include a credit card type of smart card (such as the one disclosed by Narasimhan), a cell phone, a personal data assistant (PDA), a pager, etc. One would have been motivated to incorporate the functionality and storage of the smart card into other mobile devices, such as a cell phone, in order to eliminate the need to carry multiple mobile devices (e.g. a smart card, a cell phone, AND a pager)." In view of the level of skill shown by Aggarwal, Freeman; and Kolls, it is clear a skilled artisan can incorporate or adapt the functionality and storage of the smart card into other mobile devices, such as a cell phone, etc... to make them interchangeable as taught, e.g. by Aggarwal.

As to Freeman Appellant argues Freeman does not teach wireless communication. However Freeman's chip card can transmit and receive data wirelessly (col. 12 lines 13-15; col. 15 line 60).

As to Kolls, Appellants argue that Figure 4 of Kolls is described as having mutually exclusive control means, citing also column 9, lines 37-38. Applicant argues, based on that excerpt, that Kolls does not suggest that the various control means are interchangeable as the Office Action implies. This is unpersuasive as (col. 9 lines 37-52) only discusses possible system configurations and does not detract from Kolls as support for the Official Notice as stated in the last Office Action at p. 8.

At Brief p. 18-19, Appellants argue NARASIMHAN does not disclose "wirelessly applying said promotion using said mobile electronic device". At Brief p. 18 last line, Appellants argue there is no teaching and suggestion in NARASIMHAN for incorporating the smart card into other mobile devices. **The Examiner notes that this is a rejection under 35 U.S.C. 103, and the wireless transfer of data teaching and suggestion is in the Official Notice with e.g. Aggarwal as support as noted above.** "[W]irelessly applying said promotion using said mobile electronic device" is clearly taught by Aggarwal. Also the teaching and suggestion test is not the only one for obviousness since KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398 (2007). Note that Leapfrog is also used above to present a logical line of reasoning for obviousness. Contrary to argument, incorporating the smart card into other mobile devices is not required either. As discussed above, Aggarwal teaches interchangeability of any smart card with wireless devices such as cell phones, PDA's and the like.

At Brief p. 19, as to claims 3, 7, and 8, Appellants argue NARASIMHAN as if the rejection is based on anticipation. Again, in NARASIMHAN in view of Official Notice with e.g. Aggarwal as support, a mobile device such as a cell phone clearly wirelessly transfers incentives data for redemption.

At Brief p. 20-21, as to claim 13, and related dependent claims, Appellants again argue NARASIMHAN as if the rejection was based on anticipation. Again, in NARASIMHAN in view of Official Notice with e.g. Aggarwal as support, a mobile device such as a cell phone clearly

wirelessly obtains incentives from a server and transfers incentives data for redemption. Further, contrary to argument at p. 20, nothing in the claim forbids communicating from the cell phone with the server via the merchant device.

Similarly, at Brief p. 21 and as to claim 16, Appellants again argue NARASIMHAN as if the rejection was based on anticipation, that NARASIMHAN does not disclose wirelessly requesting promotions by a user. Aggarwal clearly shows downloading promotions to e.g. wireless cell phones.

**Arguments as to Claim 22 ( Brief p. 22-23):**

Appellants argue Narasimhan fails to teach sending promotion data to a consumer web portal account wirelessly accessible on a consumer mobile electronic device and "saving said promotion in a promotion saving account accessible by said mobile electronic device wherein said consumer wirelessly redeems said promotion using said mobile electronic device for a purchase at a point of sale (POS)."

The Examiner notes again the rejection is not based on anticipation. Narasimhan teaches a database of coupons stored on the smart card accessible for redemption at POS's. See Office Action of May 29, 2009 at 19. Narasimhan teaches the coupons are downloaded from a server to the user automatically or by user request (e.g. col. 4 lines 16-26). The coupons are specifically targeted to the consumer. See e.g. col. 6 lines 6-12. See Figures 2-4 and associated text describing menus for selection accessible to the consumer. Downloading from an internet server reads on sending promotion data to a consumer web portal accessible to a consumer.

As to Aggarwal, it teaches coupons downloaded to a portable device such as a portable smart card or a cellular phone and user takes such devices to POS's to redeem the coupons using a wired or wireless channel. See excerpt above.

Aggarwal also teaches customer accessing the world wide web to obtain targeted offers and save on her electronic wallet. See e.g. (col. 9 lines 30-65) excerpted below:

*In one embodiment of the invention, a customer navigates the world wide web (WWW) or an electronic marketplace using his or her electronic device (including a personal computer (PC), a cellular phone, a personal digital assistant (PDA), a TV, or other information appliance), which has a display device and an input device, and optionally storage and printing devices. Based on user profile and promotion policies, a distribution agent residing on the web site or the marketplace presents the customer a potential offer which is displayed on his or her screen. The customer may decide to explore the offer further, say by clicking on the banner advertisement. After completing the prerequisites of the offer, such as filling in the registration information, or making some purchases, etc., he or she is presented with actual coupon. After the presentation of the coupon, the customer may decide to use it immediately by making the required purchase, or decide to keep it for future use. In the latter case, a customized coupon of the offer is issued to the customer which he or she stores in his or her coupon wallet. At a later stage, the customer may use the coupon by making a purchase over the communication network. The customer navigates the world wide web or browses through an electronic marketplace using his or her terminal and makes a selection of items he or she intends to purchase. After selecting the desired items, the customer presents the coupons stored in his or her wallet to the online retailer who verifies the coupons using the verification equipment and gives the discount to the customer. The retailer stores all the redeemed coupons along with their certificate of valid use and other relevant information in the retailer's database. At a later stage, the retailer sends all these redeemed coupons and certificates of use to the clearing house or to the respective manufacturers and gets the required amount from various manufacturers. The manufacturers may maintain a database of redeemed coupons to build customer profiles for future targeting.*

As noted earlier, the Aggarwal cellular phone, wirelessly receiving coupons and redeeming them, obviously replaces the smart card system of Narasimhan. The database of coupons on Narasimhan's smart card system is replaced by that on the Aggarwal cell phone or wallet. Such database is considered "a promotion saving account accessible by said mobile electronic device.

The Aggarwal excerpt above shows sending promotion data to a consumer web portal account ("account" since the user is registered and is offered targeted offers) wirelessly accessible on a consumer mobile electronic device. The Aggarwal excerpt above also shows "saving said promotion in a promotion saving account ( the promotions saved on the cell phone

or e-wallet) accessible by said mobile electronic device wherein said consumer wirelessly redeems said promotion using said mobile electronic device for a purchase at a point of sale (POS)."

Thus claim 22 is met by Narasimhan in view of AGGARWAL.

**Independent Claims 26, 30, 37, 55, 61 and Related Dependent Claims; dependent claims 33, 35:**

Arguments at Br. p. 23-29; 30-34; 35-40; 43-48; 48-53, in essence merely repeat the same general challenges that the smart card of NARASIMHAN cannot technically be replaced by the wireless device of at least AGGARWAL to perform the wireless functions claimed. The same responses presented above apply here. It is clear AGGARWAL discloses wireless transmission via a network of coupons or offers to wireless devices that present same to POS's for redemption. Notwithstanding that NARASIMHAN teaches downloading of coupons via PC to smart card as argued, all such are just computer downloading techniques, obviously replaceable, to one skilled in the art at the time of this invention, by the wireless downloading as taught in AGGARWAL, in view of the level of skill in the computer arts evidenced by AGGARWAL and NARASIMHAN As well in Kolls and Freeman.

**Note that the Aggarwal excerpt (col. 9 lines 30-65) above:**

*( " In one embodiment of the invention, a customer navigates the world wide web (WWW) or an electronic marketplace using his or her electronic device (including a personal computer (PC), a cellular phone, a personal digital assistant (PDA), a TV, or other information appliance), which has a display device and an input device, and optionally storage and printing devices....")*

**equates a personal computer (PC) with the cell phone.** Thus, contrary to this argument, and many arguments later presented, the substitution of the Aggarwal cell phone for the combination of a PC and smart card is clearly within the level of skill in the art since all these consumer devices are just "information appliances" which can all have "*.. a display device and an input device, and optionally storage and printing devices.*" (Aggarwal, col. 9 lines 30-65)

and all can be used interchangeably to transfer data). **The NARASIMHAN combination of PC and smart card is just one such combination of "information appliances" for data transfer thus obviously interchangeable with the Aggarwal cell phone.**

As to claim 33, both NARASIMHAN and AGGARWAL teach contacting a distributor to request a promotion by clipping or downloading. The latter teaches wirelessly doing so.

As to claims 35, 58 wirelessly downloading to a cell phone would obviously involve contacting a coupon distributor by dialing a telephone number since that is the normal mode of operation of a cell phone.

As to claim 37 it is further argued the smart card cannot reply to an offer, only the user via the PC. However the cell phone of AGGARWAL clearly offers two-way communication and it would have been obvious it would replace, if desired, the PC/ smart card combination of NARASIMHAN (which teaches also two-way communication, and consumer accepting promotions offers) to allow consumer to conveniently accept, as taught by NARASIMHAN, by wireless means. See Aggarwal, col. 9 lines 30-65, for interchangeability of cell phone and PC, and discussion above.

As to claim 58, AGGARWAL teaches cell phones and cell phones are usually identified uniquely by their phone numbers. Again, contrary to argument, it is obvious to replace the PC and smart card combination of NARASIMHAN with the 2-way communication device of a cell phone taught by AGGARWAL to provide convenient wireless and portable 2 way communication. See Aggarwal, col. 9 lines 30-65, for interchangeability of cell phone and PC, and discussion above.

#### **Dependent claim 63:**

It is argued (Br., 53) the smart card of Narasimhan does not send communications for the system to respond to for coordinating payment for an associated transaction. However

Narasimhan discloses "redeeming the promotion at a point of sale (POS) terminal (merchant device) using a payment method controlled by the consumer's mobile electronic device (credit card)." Office Action of May 29, 2009 at 26. In the combination of NARASIMHAN and AGGARWAL the cell phone responds by authorizing a transaction. "Means operable in response to communications from said wireless mobile electronic device for coordinating payment for said associated transaction." would just read on a traditional payment system as taught by NARASIMHAN (the means would be e.g. a credit card payment system). Also, for brevity, please see prior art discussion as to this claim above.

**Arguments as to independent claims 66 and 70 and dependent claims 67-69 and 71-73 (Br. p. 53-54, 55-57):**

Again, in general, it is argued the smart card is not a wireless device and/or the two way communications via the fixed user PC to the smart card somehow cannot be replaced by those provided by a wireless device as taught by AGGARWAL, so the claimed inventions are unobvious. As stated above, the particular claimed functions are disclosed by NARASIMHAN. See relevant sections of the previous Office Action or above. Some also by AGGARWAL. Replacement of the combination of user PC and smart card by a wireless device performing the same functions, would have been obvious in view of the excerpted teachings of AGGARWAL and Leapfrog as discussed above.

As to claims 68, 70, 72, 73, contrary to argument it is not claimed that the server or system receives acceptance information, or other claimed information, directly from the user device, thus via a merchant device, or via the user PC, as taught by NARASIMHAN as cited (Br., p. 54-57) reads on the claim. Again the wireless device is further taught by AGGARWAL. Also, for brevity, please see prior art discussion as to these claims above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

**For the above reasons, it is believed that the rejections should be sustained.**

Respectfully submitted,  
/Khanh H. Le/  
Primary Examiner, Art Unit 3688

**Conferees:**

Vincent Millin /vm/  
Appeals Practice Specialist:

/R. W./  
Robert Weinhardt,  
Supervisory Patent Examiner, Art Unit 3688